

REMARKS

Claims 2, 3, 5, 6, 8-10, 12, and 46-49 are currently pending within this application. No Claims have been added, amended, or canceled.

The Office has rejected Claims 5-6, 8-9, and 46-49 under 35 U.S.C. §102(e) as being anticipated by Wiesel. Applicants respectfully disagree with the Office's untenable basis of rejection as Wiesel clearly does not provide a teaching that meets all of the present claim limitations. Initially, there is clearly lacking within Wiesel's disclosure any discussion of a "curable dental restorative composite." Applicant explained within his originally filed specification that the gist of his invention lies in the ability to provide ease in application of a highly adhesive material for the resurfacing of a target tooth surface while protecting the adhesive material from curing prior to exposure to curing materials, protecting the applicator (spatula, etc.) from adhering to the adhesive material, and preventing excess adhesive material from undesirably binding to other tooth surfaces. Such a composite is thus applied to a tooth surface while the composite and tooth are both basically enveloped within a carrier film, manipulated to form to the contours of the subject tooth, and ultimately cured into place (utilizing a particular light source or free radical generation, as examples). To the contrary, Wiesel fails to teach any materials that would remotely be considered "curable" in nature. Whitening agents are not curable; to the contrary, the only example provide, peroxide, is actually utilized as a standard curing agent in polymerization reactions, but in and of itself, it exhibits no curability as now required of Applicant's claimed invention. As such, anticipation is lacking.

Furthermore, it is important to note that Wiesel is directed to a manner of providing (by

example) a tooth whitening method and (by suggestion) a tooth desensitizing method. There is no discussion of the need to provide (or prevent) any whitening or desensitizing effects to the sides of the teeth that abut other tooth surfaces; nor is there any discussion of the importance or possibility of preventing any tooth whitener or tooth desensitizing materials from contacting other tooth surfaces. This omission by patentee is particularly noted by Applicant because Wiesel clearly exemplifies in his figures a composite for transfer of tooth whitening materials to tooth faces that is rectangular in shape (Fig. 1)(with the whitening portion extending from one end to the other). There is no discussion within the four corners of this patent of any other possible shape, other than the length of the composite covering up to all of a person's teeth (such a teaching is still limited to either a rectangular- or possible square-shaped article). There is no "T"-shaped configuration provided by this reference; there is no possibility, likewise, of such a rectangular (or square) shape article being applied to both the front faces of one or a plurality of teeth while simultaneously wrapping outside the edges of a tooth (or teeth) as well. Such a shape as required by Wiesel's teachings simply cannot fold properly to accommodate both the necessary coverage of the front of the teeth (i.e., the portion that is to be whitened for aesthetic purposes) as well as the back portion of the teeth (which is suggested within the reference) as well as the sides of the subject teeth; basic geometry provides all the basis the ordinarily skilled artisan needs to determine such an impossibility. The Office has simply determined that "the terminal ends of the same tabs [of Wiesel's composite] are embrasure tabs since they can be cut to fit and capable of wrapping around the teeth to occupy the space in the embrasures." Applicant fails to understand the basis of this type of argument in favor of anticipation posited by the Office. As noted above,

Wiesel is strictly limited in his teaching to a rectangular (or impliedly square) shape for his tooth whitening (possible tooth desensitizing) composites; there is no discussion of any reason, need, or other purpose to modify such a structure anywhere within this cited reference. Why would any ordinarily skilled artisan cut the terminal ends of Wiesel's tooth whitening application article for any reason without any direction provided from the patentee? In Applicant's opinion, there is no such reason. At the very least, the lack of teaching any type of "T"-shaped configuration for Wiesel's composite provides sufficient basis to show that anticipation does not exist for the presently claimed invention within patentee's teachings.

The Office then further states that it "would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to design the delivery kit of Wiesel in the form of a 'T', since applicant has not disclosed that such solve [sic] any stated problem or is anything more than one of numerous shapes or configurations a person [of] ordinary skill in the art would find obvious for the purpose of providing a delivery unit for a composite that wraps around a tooth and is held in place, especially considering the design of Wiesel functions in the same manner despite the modification in the form."

Initially, Applicants must point out that the rejection by the Office was strictly based on anticipation under 35 U.S.C. § 102(e). There should be no discussion of obviousness within this basis of rejection. In any event, the position taken by the Office is incorrect no matter how the argument is presented. Wiesel provides no proper basis for any modification of his teeth whitening strips; teeth whitening and/or desensitizing are not analogous to the curable teeth restorative procedures that lie at the heart of Applicant's claimed invention (as noted above).

Applicant has shown throughout his originally filed specification that the "T"-shaped configuration of his carrier film is of great necessity to permit the application of the highly adhesive curable restorative compound to a tooth without the need for contact with any other surfaces except the tooth and film themselves (including other teeth adjacent to the target tooth). To that end, clearly, and contrary to the Office's position, Applicant has disclosed a stated problem that requires such a "T"-shaped film to be utilized. Beyond that, the Office has merely decided that Wiesel's method functions in the same manner as that of Applicant's presently claimed invention; only the form is modified. Applicant vehemently disagrees with this implication by the Office as the function of Wiesel, as stated *ad nauseum* above, is limited to providing a tooth whitening and/or desensitizing process; Applicant's invention is directed to a kit that provides specific composites and configurations that aid in applying a curable dental restorative composite to a tooth surface. The application of Wiesel's exemplified and suggested materials is different in scope and effect, and thus function, from that required of Applicant's currently claimed inventive kit. The necessity to protect the adjacent (abutting) teeth from the highly adhesive restorative composite of Applicant's invention has been thoroughly delineated by Applicant and such is clearly not analogous to the function of Wiesel's disclosure [to impart a manner of fully coating the exposed areas of a subject tooth (or teeth) to whitening while preventing contacting with the highly oxidative whitening materials with sensitive gum surfaces]. Reconsideration and withdrawal of this improper anticipatory (and/or obviousness) rejection are therefore earnestly solicited.

The Office has also rejected claims 2-3 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Wiesel in view of Davie, Jr. et al. The Office has also rejected Claim 12 under the same statute as being unpatentable over Wiesel in view of Jacobs et al., in further view of Sawhney et al. Applicant has chosen to respond to these two rejections simultaneously as they both rely upon the same improper basis of rejection as over independent Claim 46, above (specifically the reliance upon the Wiesel reference). Beyond the fact that Wiesel is directed specifically to a tooth whitening article (possibly a tooth desensitizing article), and Davie, Jr. et al. is directed to a pill blister pack (Applicant still sees no proper basis of combining these references as the purposes of these two disparate references have no overlap or suggestions to modify), as well as the fact that Jacobs et al. and Sawhney et al. are both directed to curable (polymerizable) materials (not the same as taught within Wiesel), the lack of proper teaching of the entire kit as required within Applicant's claims by Wiesel initially renders these bases of rejection improper as well. Nowhere within these cited references is there even remotely suggested that a "T"-shaped composite article may be provided at all. All in all, it is Applicant's opinion that without a proper basis of rejection provided by the Wiesel patent, even if such a combination of that reference with the secondary and tertiary references is considered proper (and, again, Applicant wholly disagrees with such a position), such a combination simply fails to provide a teaching that actually meets the current claim limitations. Reconsideration and withdrawal of such improper rejections are therefore respectfully requested.

CONCLUSION

In view of the remarks supplied above, it is respectfully submitted that the present claims of this application are now in condition for allowance and that this case be passed on to issue.

Respectfully submitted,

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